

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

)
)
IN THE MATTER OF THE WINDING DOWN OF:)

THE NEW HAMPSHIRE MEDICAL MALPRACTICE)
JOINT UNDERWRITING ASSOCIATION)
)
_____)

No. 217-2015-CV-00347

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY COMMISSIONER,
IN SUPPORT OF APPROVAL OF DISPOSAL OF RECORDS**

I, Peter A. Bengelsdorf, depose and say:

1. I am the Special Deputy Commissioner of the New Hampshire Medical Malpractice Joint Underwriting Association (“NHMMJUA”) appointed by the Insurance Commissioner for the State of New Hampshire, as Receiver (“Receiver”) of the NHMMJUA. I submit this affidavit in support of the Receiver’s Motion for Approval of Disposal of Records. The facts and information set forth in this affidavit are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. This proceeding was commenced on July 21, 2015 pursuant to the recently enacted statute providing for the winding down of the business of the NHMMJUA through a receivership. RSA 404-C:15 - :17. The Court issued a Rehabilitation Order dated July 22, 2015.

3. The Rehabilitation Order and RSA 404-C:16 directed the Receiver to wind down the business of the NHMMJUA. That process is now essentially complete. As reported in the Receiver’s monthly reports, the NHMMJUA stopped issuing policies effective December 31,

2015. On August 25, 2016, the Receiver transferred the NHMMJUA's coverage obligations to The Medical Protective Company ("MedPro") pursuant to the Assumption Agreement approved by the Court on August 5, 2016. The Receiver has resolved the NHMMJUA's tax issues with the federal and state tax authorities. The Receiver has transferred excess NHMMJUA funds to the *Tuttle* Class Action Account pursuant to the Court's orders dated September 11, 2018 and November 7, 2018. The Receiver returned remaining Stabilization Reserve Fund ("SRF") amounts to providers and, on April 3, 2019, transferred unclaimed SRF funds to the Abandoned Property Division of the New Hampshire Treasury pursuant to the order dated March 28, 2018. On May 3, 2019, the Receiver moved for approval to transfer the remaining hardship fund to Endowment for Health, Inc. After that transfer, and subject to the payment of final administrative expenses and transfer of the few remaining assets, the assets and liabilities of the NHMMJUA will have been resolved and disposed of. The Receiver is accordingly addressing remaining administrative issues before filing the final motions for discharge and closure of the proceeding.

4. One of the last issues is the disposal of the remaining records of the NHMMJUA and the NHMMJUA receivership. Disposal of such records pursuant to Court order is authorized by RSA 402-C:50.

5. Paper records regarding in-force and historic policies of insurance issued by the NHMMJUA and claims under such policies were transferred to MedPro in connection with the closing of the Assumption Agreement transaction on August 25, 2016. Copies of electronic records concerning the NHMMJUA policies and open claims were also provided to MedPro at that time. MedPro has the NHMMJUA records that it needs to handle obligations under the NHMMJUA policies in accordance with the Assumption Agreement. The NHMMJUA and

Receiver ceased to administer NHMMJUA policies and claims under the policies in August 2016.

6. The remaining paper records of the NHMMJUA and the receivership consist principally of approximately 85 boxes of administrative and financial records including remaining board of directors minutes and agenda materials; servicing carrier agreements and correspondence; certain historical actuarial reports; certain historical yearly, quarterly and monthly financial statements; accounting records; deposit slips, bill sheets, invoices, claim checks and operating checks; records concerning the Vested Retirement Reserve; records concerning the SRF; historical risk management data; hardship grant applications; W-9's; and various administrative correspondence. The electronic records of the NHMMJUA and the receivership consist principally of administrative and financial records including financial statements, accounting records, bank records, and policy and claims information (the policy and claim information duplicates information provided to MedPro). Other records concern the various steps taken during the receivership, including the MedPro transaction, resolution of federal and state tax issues, and the SRF return.

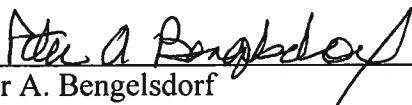
7. Records are principally in the possession of The Hays Group, Inc. (the long-time administrator of the NHMMJUA that has continued to provide services to the Receiver). Records of significant transactions concluded during the receivership, such as the MedPro transaction, resolution of federal and state tax issues, and the SRF return are not held by Hays. Such records are generally in the possession of Leone, McDonnell & Roberts (the NHMMJUA's accountants and auditors who continued to provide services to the Receiver), the Special Deputy Commissioner, and counsel to the Receiver.

8. In light of the progress in winding down the NHMMJUA, and where at the conclusion of the proceeding the NHMMJUA is to be liquidated and the Receiver discharged (see RSA 404-C:17, II), the records of the NHMMJUA and the NHMMJUA receivership are no longer useful. The Receiver accordingly proposes to dispose of the records that can be reasonably and cost-effectively destroyed, both paper and electronic, of the NHMMJUA and the NHMMJUA receivership with the exception of certain records that will be turned over to the New Hampshire Insurance Department for future reference.

9. The Receiver recommends that he provide the New Hampshire Insurance Department with the following records: (a) the pleadings in the NHMMJUA receivership proceeding; (b) the MedPro Assumption Agreement with its schedules; (c) a schedule of the Stabilization Reserve Fund (“SRF”) returns made by the Receiver as well as the filing concerning unclaimed SRF returns made with the Abandoned Property Division of the New Hampshire Treasury; (d) the NHMMJUA’s federal and state tax returns from 2013 forward, as well as closure filings and agreements resolving issues with federal and state tax authorities. The transferred records will then be subject to the New Hampshire Insurance Department’s record retention policies and procedures.

10. Subject to providing the New Hampshire Insurance Department with the records identified in the preceding paragraph, the Receiver recommends that the records of the NHMMJUA and the NHMMJUA receivership, whether in paper or electronic form and whether held by Receiver or third parties that have acted for the NHMMJUA or the Receiver, be disposed of pursuant to RSA 402-C:50 as no longer useful. The Receiver that paper records be shredded and that electronic records be deleted to the extent that is reasonably practical.

Signed under the penalties of perjury this 16 day of May, 2019.


Peter A. Bengelsdorf
Special Deputy Commissioner of the New Hampshire
Medical Malpractice Joint Underwriting Association

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On May 16, 2019 before me, CLAUDIA A. KING - NOTARY Public, personally appeared Peter A. Bengelsdorf, Special Deputy Commissioner of the New Hampshire Medical Malpractice Joint Underwriting Association, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Signature of Notary Public

